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10/674,669	09/30/2003	Mario Elmen Tremblay	8598MR	5011
27752	7590	01/02/2009	EXAMINER	
THE PROCTER & GAMBLE COMPANY			ZHENG, LOIS L	
Global Legal Department - IP				
Sycamore Building - 4th Floor			ART UNIT	PAPER NUMBER
299 East Sixth Street				1793
CINCINNATI, OH 45202				
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			01/02/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/674,669	TREMBLAY ET AL.
	Examiner	Art Unit
	LOIS ZHENG	1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 December 2008.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-15, 18 and 19 is/are rejected.
 7) Claim(s) 16 and 17 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

Status of Claims

1. No claim amendments are made in view of applicant's response after final filed 8 December 2008. Therefore, claims 1-19 are currently under examination.

Status of Office Action

2. In section IV of applicant's remarks after final filed 8 December 2008, applicant correctly points out that the Buckley et al. US 6,632,347(Buckley) does not qualify as prior art under 35 U.S.C. § 102(b) art because the publication date of Buckley of 14 October, 2003 is later than the filing date of the instant application which is 30 September 2003. However, Buckley qualifies as prior art under 35 U.S.C. § 102(e). Since applicant had already made arguments regarding the anticipation rejection based on Buckley, the instant Office Action is made Final.

Specification

3. The amendment to the specification filed 8 July 2008 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Example A and related discussion and Table A.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1, 9 and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In this case, claims 1, 9 and 15 recite "wherein the system is structured to consume power at about one Watt or less". This claim amendment is not supported by the original specification.

In addition, claim 15 further recites "said reservoir is configured to automatically deliver halogen dioxide salt". However, the original specification does disclose that the halogen dioxide salt is automatically delivered.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Buckley et al. US 6,632,347 B1(Buckley).

The rejection of instant claim 1 is maintained for the same reasons as set forth in paragraph 8 of the previous Office Action mailed 6 October 2008.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 4-5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley.

The rejection of instant claims 4-5 and 7-8 is maintained for the same reasons as set forth in paragraph 10 of the previous Office Action mailed 6 October 2008.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley, and further in view of Spence US 4,414,070(Spence).

The rejection of instant claim 2 is maintained for the same reasons as set forth in paragraph 11 of the previous Office Action mailed 6 October 2008.

11. Claims 3, 9-11, 13-15 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley, and further in view of Kaczur et al. US 5,106,465 (Kaczur).

The rejection of instant claims 3, 9-11, 13-15 and 18-19 is maintained for the same reasons as set forth in paragraph 12 of the previous Office Action mailed 6 October 2008.

12. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buckley in view of Kaczur, and further in view of DE 100 17 407 A1 (DE'407).

The rejection of instant claims 6 and 12 is maintained for the same reasons as set forth in paragraph 13 of the previous Office Action mailed 6 October 2008.

13. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley US 6,306,281 B1(Kelley) and Buckley et al. US 6,632,347 B1(Buckley).

The rejection of instant claim 1 is maintained for the same reasons as set forth in paragraph 14 of the previous Office Action mailed 6 October 2008.

14. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Buckley, and further in view of Spence US 4,414,070(Spence).

The rejection of instant claim 2 is maintained for the same reasons as set forth in paragraph 15 of the previous Office Action mailed 6 October 2008.

15. Claims 3-5 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Buckley, and further in view of Kaczur et al. US 5,106,465 (Kaczur).

The rejection of instant claims 3-5 and 7-8 is maintained for the same reasons as set forth in paragraph 16 of the previous Office Action mailed 6 October 2008.

16. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Buckley and Kaczur, and further in view of DE 100 17 407 A1 (DE'407).

The rejection of instant claim 6 is maintained for the same reasons as set forth in paragraph 17 of the previous Office Action mailed 6 October 2008.

17. Claims 9-15 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Buckley, and further in view of Kaczur, and further in view of Cowley et al. US 5,965,004(Cowley), and further in view of DE '407.

The rejection of instant claims 9-15 and 18-19 is maintained for the same reasons as set forth in paragraph 18 of the previous Office Action mailed 6 October 2008.

Allowable Subject Matter

18. Claims 16-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

19. Applicant's arguments filed on 8 December 2008 have been considered but are not persuasive.

In the remarks, applicant argues that the amendment to the specification filed 8 July 2008 is not new matter because US Pat. App. No. 09/947,846 is already incorporated by reference in the original specification of the instant invention and is in compliance with 37 C.F.R §1.57(b) and (f).

The examiner does not find applicant's argument persuasive because the original specification of the instant invention recites many US Patents and Non-Patent Literatures (see page 2 line 24 - page 3 line 6, page 9 lines 12-17, page 10 lines 27-34, page 11 lines 19-20, page 12 line 11-12, page 14 lines 5-7 and 22-25). On line 32 on page 20 of the instant specification recites that "All documents recited are, in relevant part, incorporated herein by reference". The phrase "in relevant part" implies that either not all of the recited documents are relevant or only part of each recited documents are relevant. In addition, this sentence also implies that only the relevant parts of the cited

documents are incorporated by reference. However, applicant has not point out specific sections of any of the cited documents are considered relevant. As set forth in MPEP 608.01(p), under Section A titled “Review of Application Which Are To Issue as Patents”, “Particular attention should be directed to specific portions of the referenced document where the subject matter being incorporated by be found”. Furthermore, the instant specification is a continuation-in-part of US Pat. App. No. 09/947,846, now US Pat No. 7,048,842, which means that the scope of the instant invention is different from the scope of the parent application. Without clear discussion of specific portions of the US Pat. App. No. 09/947,846 that are considered relevant, the amendments to the specification and the claims are not considered to be incorporated into the instant specification by reference.

Furthermore, Section A titled “Review of Application Which Are To Issue as Patents” of MPEP 608.01(p) states that “An application for patent when filed may incorporate ‘essential material’ by reference to (1) a U.S. Patent, or (2) a U.S. patent application publication, which patent or patent application publication does not itself incorporate such essential material by reference. See 37 CFR 1.57(c).” In this case, since the parent US Pat. App. No. 09/947,846, now US Pat No. 7,048,842, already incorporates essential material by reference in multiple places (col. 7 lines 14-24, col. 8 lines 25-39, col. 8 line 65 - col. 9 line 1, col. 9 lines 33-38, col. 11 lines 1-6 and col. 11 lines 30-34), the instant application cannot incorporate the parent US Pat. App. No. 09/947,846, now US Pat No. 7,048,842, by reference according to See 37 CFR 1.57(c).

Therefore, the amendments to specification and claims as filed 8 July 2008 are new matter. The objection to specification and the rejection of claims 1, 9 and 15 under 35 U.S.C. 112, first paragraph, are proper.

In remarks, applicant further argues that Buckley does not teach a non-membrane electrolysis cell because Buckley teaches an electrolysis cell that uses a semi-permeable ceramic membrane that separates the electrolysis cell into anode and cathode chambers.

The examiner does not find applicant's argument persuasive because the semi-permeable ceramic membrane as taught by Buckley is not an ion permeable or ion selective membrane. As seen in col. 14 lines 42-47 of Buckley, the function of the semi-permeable membrane is to allow adequate flow of the solution between the anode and cathode chambers while being sufficiently non-permeable to prevent gross mixing of the anolyte and the catholyte. Therefore, the semi-permeable membrane of Buckley is used for controlling flow of electrolyte solution, just as claimed, and is not for selective ion exchange. Based on the teachings of Buckley, the examiner concludes that the semi-permeable ceramic membrane reads on the claimed non-conducting porous flow barrier and the electrolysis cell of Buckley is a non-membrane cell.

In addition, applicant's argument regarding Buckley's teaching of separate anode and cathode chambers, the examiner does not consider applicant's argument persuasive because the instant claims do not limit the claimed electrolysis cell to have no anode and cathode chambers.

Applicant's argument that there is no reason to modify Buckley to remove the separator membrane is moot because the separator membrane of Buckley reads on the claimed non-conducting porous flow barrier and the Buckley's electrolysis cell is free of an ion-exchange membrane.

Applicant further argues that neither Buckley nor Kelley teaches an electrolysis cell structured to consume power at about one Watt or less and Buckley and Kelley teach substantially higher amount of power is consumed during electrolysis.

The examiner does not find applicant's argument persuasive because Buckley or Kelley in view of Buckley teaches an electrolysis cell that is structurally the same as claimed electrolysis cell, one of ordinary skill in the art would have expected the electrolysis cell of Buckley or Kelley in view of Buckley to be capable of operating at a power output of about one Watt or less with success by manipulating the current/voltage to the electrolysis cell. In addition, how much power is consumed during electrolysis is directed to how the claimed electrolysis cell is operated, i.e. process limitation, therefore, does not render the claimed apparatus patentable.

Applicant further argues that the "thin protective spacer" as taught by Kaczur reads on the claimed porous flow barrier and the three layers of polypropylene spacer of Kaczur is not porous because it has 1/8 inch square holes.

The examiner does not find applicant's argument persuasive because the rejection ground incorporates Kaczur's teaching of using a multi-layer polypropylene material as the suitable spacer material in the separator of Kelley in view of Buckley, Cowley and DE'407, not the large square holes.

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LOIS ZHENG whose telephone number is (571)272-1248. The examiner can normally be reached on 8:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy King/
Supervisory Patent Examiner, Art
Unit 1793

LLZ

Application Number 	Application/Control No.	Applicant(s)/Patent under Reexamination
	10/674,669 Examiner LOIS ZHENG	TREMBLAY ET AL. Art Unit 1793